

APPENDIX

No. ———.

In the Supreme Court in the United States of America

THOMAS GILCREASE,	-	-	-	-	-	Petitioner
vs.						
G. R. McCULLOUGH, H. B. MARTIN, A. E. BRADSHAW	-	-	-	-	-	Respondents
and AL BROWN,	-	-	-	-	-	

Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma

To the Honorable Supreme Court of the United States:

Your said Petitioner respectfully alleges and shows to this court: That by his petition filed in the District Court of Tulsa County, Oklahoma, he sought to cancel and set aside a certain oil and gas mining lease by him made on the 24th day of August, 1909, by which he assumed to lease the south half of the northwest quarter and the north half of the southwest quarter of section twenty-two (22), township seventeen (17) north of range twelve (12) east of the Indian Meridian to Grant

R. McCullough for oil and gas mining purposes and also a certain contract dated the 8th day of February, 1911, between Petitioner and the Respondents, Grant R. McCullough and H. B. Martin, intended to ratify the above mentioned lease and provide for operations thereunder and for the division of the proceeds, accounting was also sought.

The facts are that your Petitioner is a Creek Citizen of one-eighth blood, duly enrolled as such and received the above described lands as his allotment.

That the enrollment records of the Commissioner to the Five Civilized Tribes show that Petitioner was enrolled June 9th, 1899, as nine years of age and show nothing further as to his age or the date of his birth. He would therefore not appear by said enrollment records to be 21 years of age until June 9th, 1911, nearly two years after the making of said oil and gas lease and four months after the making of the contract for operations and distribution of proceeds. And your Petitioner therefore appeared by the enrollment records to be a minor at the time of the execution of both said instruments.

This court has held in *Truskett v. Closser*, 236 U. S. 223, that the effect of Act of Congress of May 27th, 1908, 35 Stat. at L. 312, Chap. 199, was

to place a restriction upon the alienation or encumbrance of the title to allotments of minors of the Five Civilized Tribes and to make void an oil and gas lease executed by such minor covering his allotment.

That statute provides among other things that:

“Section 3. That the rolls of citizenship and of freedmen of the Five Civilized Tribes approved by the Secretary of the Interior shall be conclusive evidence as to the quantum of Indian blood of any enrolled citizen or freedman of said Tribes and of no other persons, to determine questions arising under this Act, **AND THE ENROLLMENT RECORDS OF THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES SHALL HEREAFTER BE CONCLUSIVE EVIDENCE AS TO THE AGE OF SAID CITIZEN OR FREEDMAN.**”

In the case at bar the Supreme Court of Oklahoma held that the enrollment record “is only conclusive that on that date (June 9th, 1899,) he (petitioner) had passed his ninth birthday and had not reached his tenth and does not prove he was a minor on February 8th, 1911, the date of the lease sought to be set aside on the ground of minority which was four months and one day less than twelve years thereafter.” (See paragraph 5 of Syllabus).

The Court held the lease of August 24, 1909, absolutely void as in violation of the Statute above referred to, but held the contract of February 8th, 1911, sufficient not as a ratification, but as a lease,

though it contained no operative words as such, and that it did not violate the restriction of said Act.

Your petitioner therefore says that there was in said cause by his petition and his brief and by his petition for rehearing a title, right, privilege and immunity set up and specially claimed under the said Act of Congress of May 27th, 1908, which provided:

“That any attempted alienation or encumbrance by deed, mortgage, contract to sell, power of attorney, or other instrument or method of incumbering real estate, made before or after the approval of this Act, which affects the title of land allotted to allottees of the Five Civilized Tribes prior to removal of restrictions therefrom, and also any lease of such restricted land made in violation of law before or after the approval of this Act shall be absolutely null and void.”

And, which Act further provides as above stated that the enrollment records shall be conclusive evidence of the age of any citizen and as held by this Court imposes a restriction upon the lands of minors defined by the Act to be males under the age of twenty-one years. And the decision of the said Court was and is against said title, right, privilege and immunity so especially set up and claimed and is erroneous in the following particulars, to-wit:

First: The said court refuses to be concluded by that evidence which said Act makes conclusive

and said decision is to the effect that actual age and not age as shown by the enrollment records is the material inquiry in determining when restrictions are removed from a minor allottee's land.

Second: The court erred in holding in substance that the Act of Congress made actual age a material inquiry in determining questions arising under the Act so that the enrollment records are conclusive only as to *years* of age and not conclusive as to the question arising under the Act. "When could Petitioner lease his allotment?"

Third: The court erred in not holding that the term "conclusive evidence" as used in the Act means that class of evidence which when produced precludes judicial inquiry into actual age and makes immaterial any question save "what age do the enrollment records show the allottee to be?"

Fourth: The court erred in holding that the enrollment record was conclusive only as showing that Petitioner passed his ninth birthday and not conclusive that he was of the exact age shown thereby.

Fifth: The court erred in holding that the contract of February 8th, 1911, was a sufficient oil and gas lease and was not void as having been given when the enrollment records showed petitioner to be a minor.

Sixth: The court erred in holding the enroll-

ment record dated June 9th, 1899, showing Petitioner to be nine years old at that time was insufficient to show and was not conclusive that he was a minor for the purpose of all questions arising under the Act on February 8th, 1911.

The final decision of said cause was had in the Supreme Court of the State of Oklahoma on the 9th day of January, 1917, at which time said court denied your Petitioner's petition for rehearing in said cause and the complete record of said cause is now in said court where it is numbered 5773 and styled with this petitioner as plaintiff in error and respondents as defendants in error.

Your Petitioner further shows that the title to an immense acreage of land allotted to minors of the Five Civilized Tribes is dependent upon the question here involved. That the said Supreme Court of Oklahoma by its decision in *Linam v. Beck*, 152 Pac. Rep. 344 (not yet officially reported) had held an exactly contrary doctrine and the United States Court for the Eastern District of Oklahoma in *Bell v. Cook*, 192 Fed. 597, had held a contrary rule.

The cause, therefore, is of public importance and the property involved in this litigation is of the value of more than half a million dollars.

Your Petitioner presents herewith as part of this petition a brief presenting more fully his

views upon the questions herein and also a certified transcript of the record in the said Supreme Court of Oklahoma.

WHEREFORE, premises considered, Petitioner prays this Honorable Court to grant its Writ of Certiorari directed to said Supreme Court of the State of Oklahoma, requiring that the record of said cause in said Court and its judgment and decree therein be certified to this Court and that this Honorable Court will thereupon proceed to correct the errors complained of, reverse said judgment and decree and remand said cause and give your Petitioner such other and further relief as the nature of the cause may require and this Court may find appropriate.

THOMAS GILCREASE,
Petitioner.

By A. J. BIDDISON,
His Attorney.

State of Oklahoma, Tulsa County, ss.

A. J. Biddison of lawful age being duly sworn on his oath says: That he is one of the attorneys for Thomas Gilcrease, Petitioner herein, and as such had personal charge of the cause in the foregoing petition mentioned in the Supreme Court of the State of Oklahoma, that he has read the fore-

going petition and that the allegations thereof are true as he is informed and verily believes.

A. J. BIDDISON.

Subscribed and sworn to before me this 29th day of March, 1917.

F. CLEO HOOVER,
Notary Public.

My commission expires May 15, 1918.